IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4889 OF 1990

AND

WRIT PETITION NO.4890 OF 1990

1.Nivrutti Daji Narake
2.Namdeo Daji Narake ...Petitioners
Both residents of Nandgaon, (Opponent Nos.
Tal : Karvir, Dist.Kolhapur 1 and 2)

Versus

1.Smt.Janabai w/o Piraji Narke
2.Smt.Parubai w/o Piraji Narke ...Respondents
Both residents of Nandgaon, (Original
Tal : Karvir, Dist.Kolhapur. Applicants)

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Mr.B.P.Apte with Mrs.Anjali Helekar for Petitioners.

Mr.N.J.Patil for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 4, 2004.

ORAL JUDGMENT :

1. Both these Petitions can be disposed of by common Judgment, as issue involved is identical,

between the same parties. The Petitioners and Respondents are related to each other. The husband of Respondent No.1, and Respondent No.2 was cultivating the suit land along with the Petitioners. He expired in 1956, whereafter, the Petitioners continued to cultivate the suit land; nonetheless, in the proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act'), purchase price has been determined in respect of the suit land holding that the parties were in joint cultivation. Consequent to that order, purchase price has been fixed and Certificate under Section 32M of the Act has been issued in favour of the parties. Issuance of Certificate under Section 32M raised presumption that the Petitioners and Respondents were co-tenants and have now become co-owners in respect of the suit land. It is on that assumption, the Respondents 1 and 2 preferred application before the Tenancy Authority under Section 84 of the Act asserting that they have been forcibly dispossessed from the suit lands, though they have become co-owners and were in joint possession along with the Petitioners. The Tenancy

Authority, however, rejected that application on the reasoning that the names of the Respondents have not been entered in the Village records, so as to establish their stand of joint possession. The Respondents carried the matter in Revision before the Maharashtra Revenue Tribunal, which in turn, has allowed the Revision Application by the impugned Judgment and Order dated August 23, 1990. The Tribunal, on the other hand, has found that issuance of Certificate under Section 32M of the Act presupposes that the Petitioners and Respondents were co-tenants and have therefore become co-owners in respect of the suit land on the tillers' day i.e. 1st April 1957. The Tribunal, therefore, proceeded to hold that the Respondents/Applicants have been obviously dispossessed only after the tillers' day i.e. 1st April 1957. On that reasoning, the Tribunal proceeded to pass the following order :

> "Both these Revision Applications are allowed. The orders passed by Sub-Divisional Officer, Karvir Dn., Kolhapur in both Tenancy Cases Nos.4/83 and 5/83 on 27.10.89 are set aside. The opponents are liable to be summarily dispossessed from the suit lands and at

> the same time the applicants Nos.1 and 2 and opponent Nos.1 to 3 are to put in joint possession of the suit lands Gat Nos.1016, 1033 as per provisions of the Section 73 of the Bombay Tenancy and Agricultural Lands Act. No order as to costs."

2. After hearing Counsel appearing for the parties, the moot question that arises for consideration is whether application as preferred by the Respondents under Section 84 of the Act, can be said to be appropriate remedy available to the Respondents. Section 84 of the Act reads thus:

> 84.Summary eviction.- Any person unauthorisedly occupying or wrongfully in possession of any land -
>
> (a) the transfer or acquisition of which either by the act of parties or by the operation of law is invalid under the provisions of this Act.
>
> (b) the management of which has been assumed under the said provisions, or
>
> (c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons, may be summarily evicted by the Collector."

3. In the present case, it has been found as

of fact, that the Petitioners and Respondents were co-tenants prior to tillers' day and have become co-owners of the suit land. On that finding, it necessarily follows that the Petitioners can neither be said to be unauthorisedly occupying or wrongfully in possession of the suit land. Indeed, Certificate issued under Section 32M of the Act would presuppose and raise presumption that the Respondents were in joint possession along with the Petitioners as co-tenants of the suit land on the tillers' day and have become co-owners thereof along with the Petitioners. Even so, the Petitioners cannot be said to be unauthorised occupants or in wrongful possession of the suit lands as such, which is the quintessence for applying Section 84 of the Act. It is a different matter that the Petitioners have not permitted the Respondents to enjoy the suit land. That however, cannot be the basis for invoking remedy of summary eviction under Section 84 of the Act, having regard to the fact situation of the present case. Even if the Respondents may not be in possession in fact, but in law, they would continue to be co-owners on account of issuance of Certificate under Section

32M of the Act in respect of the suit land, which is also in their favour.

4. Viewed in this perspective, the Tenancy Authority ought to have relegated the parties to take recourse to appropriate remedy as may be permissible, but the mischief cannot be remedied by invoking the summary eviction action under Section 84 of the Act. If any other appropriate proceedings are taken out by the Respondents, the same will have to be decided on its own merits, in accordance with law.

5. Petitions therefore succeed. The impugned Judgment and Order is set-aside and instead, the order passed by the First Authority rejecting the application under Section 84 of the Act is restored, but for reasons mentioned hereinabove. No order as to costs.

6. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.